

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMIL PEREZ,

CASE NO. C23-0681-KKE

Plaintiff,

V.

ALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY,

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

Defendant.

Jamil Perez asks the Court to find, as a matter of law, that her past and future medical costs are reasonable and necessary and to dismiss three of Defendant Allstate Fire and Casualty Insurance Company’s (“Allstate”) affirmative defenses. Allstate does not oppose the reasonableness and necessity of a subset of Perez’s treatments and agrees to dismissal of one affirmative defense. The Court grants the motion as to these unopposed arguments. However, the Court denies the remainder of Perez’s motion because she fails to meet the high burden to show such factual determinations can be decided as a matter of law.

## I. BACKGROUND

This is a dispute for underinsured motorist (“UIM”) coverage under an Allstate policy arising from an April 28, 2018 car accident. Dkt. No. 15. The only remaining cause of action is for UIM coverage, as all other claims have been dismissed with prejudice. Dkt. No. 42. A five-day bench trial is set to begin April 21, 2025. Dkt. No. 46. Perez moves for partial summary

1 judgment that her medical treatment since the accident was necessary and the costs were  
 2 reasonable, and that the recommended future treatment costs are reasonable. Dkt. No. 47-9. Perez  
 3 also moves to dismiss Allstate's fifth, tenth, and eleventh affirmative defenses. *Id.* In response,  
 4 Allstate "stipulates that the \$2,540.56 for medical bills incurred between the accident and July 11,  
 5 2018 were reasonable and necessary" and that affirmative defense five can be dismissed. Dkt. No.  
 6 52 at 17 n.12. Allstate opposes the remainder of Perez's motion. *Id.* The parties have completed  
 7 briefing (Dkt. Nos. 52, 54), and neither requested oral argument. Accordingly, the matter is ripe  
 8 for the Court's consideration.

## 9 II. ANALYSIS

### 10 A. Legal Standard for Summary Judgment

11 "Summary judgment is appropriate when, viewing the evidence in the light most favorable  
 12 to the nonmoving party, there is no genuine dispute as to any material fact" and the moving party  
 13 is entitled to judgment as a matter of law. *Zetwick v. Cnty. of Yolo*, 850 F.3d 436, 440 (9th Cir.  
 14 2017) (cleaned up). A party moving for summary judgment "bears the initial responsibility of  
 15 informing the district court of the basis for its motion, and identifying those portions of 'the  
 16 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
 17 affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."  
 18 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). The burden  
 19 then shifts to the party opposing summary judgment, who must affirmatively establish a genuine  
 20 issue on the merits of the case. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001). The  
 21 Court does not resolve evidentiary conflicts or make credibility determinations in ruling on a  
 22 motion for summary judgment. *Gonzalez v. City of Anaheim*, 747 F.3d 789, 795 (9th Cir. 2014)  
 23 (citing *Long v. Johnson*, 736 F.3d 891, 896 (9th Cir. 2013)). Rather, such determinations are left  
 24 to the province of the jury at trial. *See id.* at 795–97.

1           **B. The Court Grants the Unopposed Relief.**

2           In response to Perez's motion, Allstate states: "Allstate does not oppose Plaintiff's motion  
 3           as it relates to the medical care between April 28, 20[1]8 and July 11, 2018 and Affirmative  
 4           Defense No. 5." Dkt. No. 52 at 2. Accordingly, the Court grants this limited relief.

5           **C. Allstate Raises Genuine Issues of Material Fact Regarding the Reasonableness and  
 6           Necessity of Perez's Medical Treatments.**

7           In addition to the necessity and reasonableness of Perez's medical costs from April 28,  
 8           2018 to July 11, 2018, Perez seeks an order finding that "the reasonableness of the costs charged  
 9           by plaintiff's medical providers for her medical treatment since the date of the April 28, 2018  
 10           collision in this case is undisputed" and "the reasonableness of the estimated cost of plaintiff's  
 11           recommended future treatment is undisputed." Dkt. No. 47-9 at 2. Perez's only argument to  
 12           support this relief is that "Defendant did not identify any medical billing expert and did not disclose  
 13           any opinion from a medical billing expert or any other expert regarding the reasonableness of the  
 14           medical billing charges or estimated cost of recommended future care from plaintiff's providers in  
 15           this case." Dkt. No. 47 at 6. In response, Allstate argues that issues regarding the reliability and  
 16           credibility of Perez's expert opinions prohibit entry of summary judgment on the reasonableness  
 17           and necessity of Perez's various treatments. Dkt. No. 52 at 18–23. In reply, Perez states  
 18           "Defendant's response contains mere arguments and allegations, and as such lacking any expert  
 19           opinion testimony to dispute Ms. Vega's opinions, fails to raise any genuine dispute sufficient to  
 20           warrant a denial of plaintiff's motion for partial summary judgment on the issue of the  
 21           reasonableness of the medical charges." Dkt. No. 56 at 3–4.

22           Courts in this district reject Perez's argument. *See, e.g., Bishop v. Brand Energy &*  
 23           *Infrastructure Servs.*, No. C11-5267BHS, 2012 WL 1145092, at \*1–2 (W.D. Wash. Apr. 5, 2012)  
 24           (plaintiff's declarations that medical care was "reasonable and customary" insufficient for

1 plaintiff's summary judgment); *Whitford v. Mt. Baker Ski Area, Inc.*, No. C11-00112RSM, 2012  
 2 WL 895390, at \*2 (W.D. Wash. Mar. 15, 2012) (same). Because damages are questions of fact,  
 3 to win on summary judgment Perez "must show that no reasonable jury could find that the amount  
 4 of damages were unreasonable or unnecessary." *Whitford*, 2012 WL 895390, at \*2 (citing  
 5 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). Perez provides medical bills and  
 6 expert reports to support a finding that the medical costs are reasonable and necessary, but this  
 7 "evidence does not shift the burden of persuasion on the issue of reasonableness from Plaintiffs,  
 8 the moving party, to [] the nonmoving party." *Bishop*, 2012 WL 1145092, at \*2. And Allstate has  
 9 raised genuine disputes with Perez's evidence. Dkt. No. 52. For example, Allstate argues Perez  
 10 only started certain treatments two years after the accident (*id.* at 16), Perez's medical billing  
 11 expert lacks experience with the treatments Perez received and her conclusions lack specificity (*id.*  
 12 at 18), and estimated costs for the same surgery vary between Perez's experts (*id.* at 20). Perez  
 13 does not respond to these arguments or provide any authority that Allstate's argument must be in  
 14 the form of a competing expert opinion. Allstate properly challenges Perez's experts' credibility  
 15 and opinions which is sufficient to survive summary judgment. *See Whitford*, 2012 WL 895390,  
 16 at \*2 (denying partial summary judgment when "Defendant challenges Dr. Stadelmann's  
 17 credibility and opinion, asserting that the massage therapy was neither prescribed nor medically  
 18 necessary"). *C.f. Villarreal v. McCully*, No. 2:19-CV-00664-BJR, 2020 WL 1689734, at \*3–4  
 19 (W.D. Wash. Apr. 7, 2020) (granting summary judgment on the reasonableness and necessity of  
 20 medical treatment when defendant failed to provide "evidence, or even allegation, of another cause  
 21 of Plaintiff's injuries").

22 Allstate raises genuine disputes of material fact regarding Perez's opposed past and future  
 23 medical costs. Perez's motion for summary judgment on damages is denied.

1           **D. Allstate's Tenth and Eleventh Affirmative Defenses Remain.**

2           Perez also seeks to dismiss two of Allstate's affirmative defenses:

3           10. Plaintiff failed to comply with her obligations under the Policy, thereby  
4           precluding or limiting any recovery.

5           11. The Policy is void and Plaintiff's claims are barred to the extent Plaintiff  
6           engaged in fraud, misrepresentations, concealment, or other acts or omission.

7           Dkt. No. 16 at 7. Perez merely argues "Defendant has failed to produce any probative evidence"  
8           of either defense. Dkt. No. 47 at 10–11. Allstate responds that "Plaintiff's own statements and  
9           actions are inconsistent with her allegations about her claimed accident-related injuries and the  
10           impact they have had on her life" which, if proven at trial, would support either affirmative  
11           defense. Dkt. No. 52 at 23. Perez does not respond to this argument or otherwise refer to these  
12           affirmative defenses in its reply. Dkt. No. 56 at 3–4.

13           Allstate's evidence that the Policy prohibits fraudulent statements or conduct (Dkt. No. 53–  
14           11 at 7), and Perez's deposition testimony and discovery responses regarding the seriousness of  
15           her injuries and the impact on her life (Dkt. Nos. 53-6, 53-12) along with her social media pictures  
16           (Dkt. Nos. 53-13, 54-14), raise sufficient disputed issues of material fact as to the viability of either  
17           affirmative defense.

18           Perez's motion for summary judgment on the affirmative defenses is denied.

19           **E. Perez's Compliance with Court Rules.**

20           Allstate raises several other issues with Perez's motion which the Court will briefly  
21           address.

22           First, Allstate is correct that the case schedule required that dispositive motions be filed by  
23           December 23, 2024 and that such motions "must be noted for consideration no later than 28 days  
24           after this date." Dkt. No. 46 at 2. Perez's motion should have been noted for January 21, 2025.  
The motion was noted for January 24, 2025. *See* Dkt. No. 47. If anything, this error allowed

1 Allstate extra time for its response, so the Court finds this error did not prejudice Allstate and takes  
 2 no action based on this error.

3 Second, Allstate moves to strike the fact section of Perez's motion for failing to cite the  
 4 record. Dkt. No. 52 at 2. The Court agrees that Perez's minimal citation to the record, without  
 5 pin cites, is unhelpful, violates the local rules, and is poor advocacy, but finds the motion to strike  
 6 is moot because, even considering the fact section, the Court denies the opposed portions of the  
 7 motion.

8 Third, Allstate argues that Perez's expert reports (Dkt. Nos. 47-4, 47-6) and other evidence  
 9 (Dkt. No. 47-7) are inadmissible. Dkt. No. 52 at 12–15, 17. The Court need not resolve these  
 10 issues because Perez's motion fails even with the Court's consideration of this evidence.

### 11 III. CONCLUSION

12 Perez's motion for partial summary judgment is GRANTED IN PART and DENIED IN  
 13 PART. Dkt. No. 47. Because Allstate does not oppose these sections of Perez's motion, the  
 14 motion is granted as follows:

- 15 • Allstate's affirmative defense number five is dismissed with prejudice.
- 16 • Perez's medical care between April 28, 2018 and July 11, 2018 was necessary.
- 17 • The cost of Perez's medical treatment from April 28, 2018 to July 11, 2018 totaling  
 18 \$2,540.56 is reasonable.

19 The remaining relief sought by Perez is denied.

20 Allstate's motion to strike is DENIED as moot. Dkt. No. 52.

21 Dated this 24th day of February, 2025.

22   
 23

24 Kymberly K. Evanson  
 United States District Judge